

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nikisha Leach	:	
	:	
v.	:	C-2022-3036868
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Nikisha Leach against Philadelphia Gas Works because she failed to appear for the scheduled hearing and prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On November 18, 2022, Nikisha Leach (the Complainant or Ms. Leach) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or the Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant checked boxes indicating that the utility is threatening to shut off her service or had already done so and that she would like a payment agreement.

On December 7, 2022, the Respondent filed an Answer admitting that it had issued a shut off notice for gas service to 664 Chew Avenue, Philadelphia, PA, the address specified by the Complainant as her home address in the Complaint. PGW further averred that the Complainant's

service bills, and the balance owed are correct. PGW also averred that the Complainant has defaulted on at least two PGW-issued payment agreements and one PUC-issued payment agreement. Additionally, PGW requested that the Complaint be dismissed.

By Hearing Notice dated December 13, 2022, a call-in telephonic hearing was scheduled for March 2, 2023, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing and how to call in. In addition, the Hearing Notice provided instructions on how to request a continuance of the hearing.

**CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

The Hearing Notice warned of the following:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed ‘with prejudice’ which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

I issued a Prehearing Order on December 14, 2022. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements, including the following instructions to a request to change the scheduled hearing:

You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request (or if you do not know).

You must submit the motion to me through my legal assistant at:

**Pamela McNeal**  
**pmcneal@pa.gov**

You must submit the motion to the other party(s) at their email address.

The Prehearing Order warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code,<sup>1</sup> or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The Hearing Notice and Prehearing Order were eServed to the Complainant in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing convened as scheduled on March 2, 2023, at 10:0 a.m. and began with a rollcall of participants and a brief off-the-record discussion. The record for the hearing began at 10:07 a.m. Anita Murray, Esquire, counsel for PGW was present with a witness and was prepared to proceed. Ms. Leach was not present.

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<sup>1</sup> Public Utility Code (Code), 66 Pa. C.S. §§ 101–3316.

Ms. Murray stated that on March 1, 2023, at 9:51 p.m., the evening prior to the hearing, she received an e-mail from the Complainant. In the e-mail, the Complainant explained that due to her work schedule, she could not attend the scheduled hearing on March 2, 2023, at 10:00 a.m., and requested that the hearing be delayed until noon the same day or the following day, Friday, March 3, 2023. TR. 3-4. Counsel also indicated that she had responded to the Complainant's e-mail request on the morning of the hearing at 8:00 a.m., informing the Complainant that any continuance request must be directed to the Commission and OALJ, and must conform to the requirements set out in the Prehearing Order issued in this matter. Tr. 4. I confirmed that my office had not received any communication from the Complainant and that a Motion for Continuance had not been filed with the Commission.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, Respondent's counsel moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

Since the date of the hearing, the Complainant has not contacted my office, nor has she made any filing with the Commission concerning her failure to appear at the hearing. In accordance with Commission policy, I am granting the Motion. The record closed on March 24, 2023, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Nikisha Leach.
2. The Respondent is Philadelphia Gas Works.
3. On November 18, 2022, Ms. Leach filed a Complaint with the Commission against Philadelphia Gas Works.
4. On December 7, 2022, the Respondent timely filed an Answer to the Complaint.

5. By Initial Telephonic Hearing Notice dated December 13, 2022, a call-in telephonic hearing was scheduled for March 2, 2023, at 10:00 a.m.

6. On December 14, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

7. Both the Hearing Notice and the Prehearing Order were eServed on the Complainant to the email address provided and registered by Complainant with the Commission.

8. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

9. On March 2, 2023, counsel for PGW and a witness appeared and were prepared to proceed with the scheduled hearing in this matter.

10. The Complainant did not call in to the hearing at the designated date and time, as instructed on the Hearing Notice and the Prehearing Order.

11. Neither Ms. Leach nor a representative called into the hearing by the time the hearing adjourned at 10:13 a.m.

12. The Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate

notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission served notice of the March 2, 2023, hearing in this case to the Complainant on December 13, 2022, via eService, to the email address she provided to and registered with the Commission. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated December 14, 2022, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant via eService, was never returned as undeliverable. Both the Hearing Notice and Prehearing Order were eServed to the Complainant at the email address she registered with the Commission. Neither was returned to the Commission as undeliverable. Notice eServed to a party's registered email address with no notification that service failed is presumed to have been received. *See Hu v. PGW Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PGW Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

A customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant did not call in for the scheduled hearing on October 20, 2022.

Here, the Complainant failed to appear for the hearing after being duly notified that it had been scheduled and the consequences of failing to appear for the hearing. As noted above, the Notice of Hearing and the Prehearing Order were both served via eService, which she voluntarily chose as her preferred method of service. The Notice of Hearing informed the Complainant that a continuance must be made in writing

and at least five days before the hearing. The Prehearing Order reiterated these requirements and provided detailed instructions regarding submission of continuance requests, indicating that they must be sent to me via email to my legal assistant. The Complainant failed to comply with the instructions provided in the Notice of Hearing and the Prehearing Order. Furthermore, the Complainant has the burden of proving why she was unable to appear at the hearing. Although Ms. Murray relayed information submitted to her by the Complainant, Ms. Murray's statements are not testimony; thus, they cannot be used to satisfy the Complainant's burden of proof as to why she was unable to appear for the hearing.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a). In this case, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence

that she is entitled to her requested relief. The Complainant did not appear for the hearing scheduled for October 20, 2022. Thus, by her failure to appear, the Complainant did not meet her burden of proof.

The party who failed to appear at the hearing has the burden of explaining why her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). In a recent case, the Commission ruled that when there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Consequently, it is appropriate to grant PGW's motion to dismiss the Complaint and dismiss Ms. Leach's Complaint, with prejudice. As the Commission has explained, where the complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, F-618-3003502 (Opinion and Order entered Feb. 6, 2020).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The Commission is required to provide due process to the parties appearing before it. This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. After being notified, a party who fails to appear at a scheduled conference or hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

8. When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss with prejudice the Complaint of Nikisha Leach at Docket No. C-2022-3036868 for lack of prosecution is granted.
2. That the Complaint of Nikisha Leach at Nikisha Leach v. PGW at Docket C-2022-3036868, is dismissed with prejudice.
3. That the Secretary mark the proceeding at Docket No. C-2022-3036868 closed.

Date: June 16, 2023

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/s/  
Arlene Ashton  
Administrative Law Judge